

# **Guidelines for Responding to Open Records Requests for Public Records in a Database**

## **PURPOSE**

The purpose of these guidelines is to assist state and local government agencies in responding to Open Records requests when the requested public records are contained in an electronic database. These guidelines are voluntary and general in nature, they are not intended to address all the various issues that can arise in responding to such requests. They are based on Kentucky's Open Records laws as of December 2003, the Enterprise Architecture and Standards, and accepted record keeping practices.

These guidelines do not determine what is or is not a valid Open Records Request. It is assumed that if the agency chooses to follow these guidelines, the agency has decided to respond the Open Records request. Specific questions on an agency's obligations and responsibilities in responding to Open Records requests should be addressed to in-house legal counsel.

## **OVERVIEW**

In today's technological environment, data is routinely maintained and stored in electronic databases. Kentucky's Open Records Act, Kentucky Revised Statutes (KRS) 61.870 – KRS 61.884, requires that public agencies make records<sup>1</sup> contained within electronic databases available to the public upon request.

Generally, requestors have specific needs and require only the generated output of databases to obtain the records or data being sought. These outputs are routinely filtered or sorted through report queries or standard reporting processes to present data in a meaningful manner to the user.

However, a great challenge exists when Open Records requests are for data in an entire database or large portions of a database. A database can consist of many inter-dependent components. Such components can include, but are not limited to, the following: software, hardware, program logic, data tables, security tables, access controls, data and table links, mathematical and other logical computations, etc. In some cases, records are stored in multiple databases and on multiple operating platforms, which further complicates the issue. In essence, raw data or records are not always useful without the proper components of the database being linked together or made available.

The challenge is to provide records as legally required by taking reasonable measures to extract the records requested without compromising system security or providing restricted or confidential information, or proprietary information which may be in violation

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<sup>1</sup>The term "record(s)" as used in these guidelines refers to public records as defined in KRS 61.870 (2). See Definitions section. It is not used as a database or IT term.

of licensing agreements. One new way to overcome these challenges is to make the information available to the public via the Internet by placing the database(s) on-line and allowing the user to manipulate and search the data for themselves. (For more explanation see section on Online Access below.)

## GUIDELINES AND BEST PRACTICE

For information about the Open Records law and agency responsibilities under it, refer to: *The Kentucky Open Records and Open Meetings Acts: Your Duty Under The Law*, and the *Open Records and Open Meetings Outline*, on the Attorney General's website (<http://www.law.state.ky.us/civil/bkOR2.html>).

### Official Request

The agency's records custodian (or its designee) should handle the Open Records request to ensure that the requestor received the records requested. Open records requests should be obtained in writing to ensure there is no misunderstanding of the requestor's needs. The request should clearly identify the records to be inspected.

In some cases it may not be clear what the requestor is asking for or there may be confusion regarding what the requestor expects to receive. To help alleviate this confusion, and avoid potential conflicts, the records custodian may deny the request as insufficiently specific. However, if the agency chooses to fill the request, the records custodian could seek additional information from the requestor to determine what information is being sought. Some types of questions that could be asked are:

- The type of data or records being requested
- The date span of the records being requested
- If appropriate, the method of sorting
- The desired physical media on which the records should be supplied (CD-ROM, DVD-ROM, Floppy Disk, Tape, FTP etc.) **While the agency is not required to provide specific media to the requestor**, due to security concerns, if the agency decides to supply the media never use media from outside the agency.
- The appropriate file format (ASCII text in fixed field, ASCII in comma delimited, Microsoft Access, dbase, etc.) *"Flat ASCII," as stated in the statute, is the minimum standard format. However, it is the least functional format available. If the record is stored in another format that conforms to the requestor's requirements, then that format may be used.*
- The appropriate supporting documentation necessary to make the requested records meaningful (data dictionaries, relationships within the data, field definitions, etc.)

**NOTE:** The agency is not required to ask these questions and must be careful to only ask questions to clarify what records are being requested and the best method of filling the request. If the agency adopts the practice of seeking clarification rather than denying a request for lack of specificity, it must take care to do so on a non-selective basis.

Finally, the agency must respond, in writing, to the request in three (3) business days, except where other state law applies.<sup>2</sup> This response should be in writing:

1. Make arrangements with the requestor for payment for and delivery of the requested records.
2. Inform the requestor of the estimated amount of time necessary to process and fulfill the request. If the delay is greater than three business days, provide a detailed explanation of the cause of the delay and the earliest date on which the records will be available.
3. Notify the requestor if any portion of the data or records s/he is requesting is exempt or otherwise not subject to the Open Records Act and therefore cannot be made available. The response should cite the relevant statutory exemption(s) and briefly explain the application of the exemption(s) to the information or records withheld.
4. Arrange a method of communication between the requestor and the agency in the event that further information is needed by the agency to fulfill the request.

### **Exempt Records**

The agency should be aware that some databases might be exempt from disclosure or contain data that is exempt and should be redacted before disclosing to the public. For example, such data includes Social Security Numbers that are protected by state and federal law. KRS 61.878 (1)(a) through (l) contains the exemptions from public inspection under the Open Records Act. A public agency has no obligation to make these records available to the public and cannot be forced to make them available to the requestor except by entry of a court order or receipt of an adverse Open Records decision from the Attorney General that is not appealed to circuit court.

While KRS 61.878(1)(a) through (l) provides specific exemptions from an Open Records request, records custodians need to be aware of other state and federal laws regarding privacy and confidentiality, for example the Health Insurance Portability and Accountability Act (HIPPA) and the Federal Education Rights and Privacy Act (FERPA). For a more detailed discussion of the impact of these laws on how an agency responds to an Open Records Request, please refer to *INFORMATION PRIVACY : A Spotlight on Key Issues (February 2004, Version 1.0)*, produced by the National Association of State Chief Information Officers.<sup>3</sup>

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<sup>2</sup> For instance, KRS 197.025(7) provides that the Department of Corrections shall respond within five (5) business days following the receipt of an open records request.

<sup>3</sup> The National Association of State Chief Information Officers (NASCIO) has released *Information Privacy: A Spotlight on Key Issues* to serve as a resource for states developing privacy policies that protect citizen information and are compliant with federal and state legal requirements. This publication highlights key areas of privacy such as children's information, drivers' information, health information, financial information, educational information, social security numbers, homeland security related information, website privacy policies and government data matching activities and agreements. In addition, the publication includes state examples for many of these areas of information privacy. The document is available for purchase to non-NASCIO members at <https://www.nascio.org/publications/index.cfm>.

In cases where a database containing exempt and non-exempt (public) data is requested, the agency must redact such exempt data while making the non-exempt data available to the requestor. This redacting of exempt data from an otherwise open record is the responsibility of the agency and does not constitute a non-standard request. The agency cannot charge for the programming or staff time required for redaction. Because of this, it is highly recommended that when databases are being designed, any exempt records should be contained in separate fields so that they can be easily identified and filtered out of a response to an Open Records request.<sup>4</sup> This formatting can be easily done on any new databases in the design stage. While an agency is not required to reformat existing databases, the agency may need to evaluate existing databases to see if it would be in their best interests to do so.

### **Standard vs Non-Standard Requests**

Generally, Open Records requests are made to obtain specific records from a database. In many instances, standard report queries can easily extract the records needed to satisfy the requestor. Where queries already exist for purposes of the Open Records Act, the agency should have little problem in performing the necessary tasks to fulfill the request. This would be considered a standard request even if data has to be redacted. In responding to a standard request the agency can charge a reasonable fee that *does not* exceed the actual cost of reproduction and *cannot* include staff time or programming cost.

In some cases extra programming may be necessary to create the records to fulfill the Open Records request. In these cases where the data requested is not contained in a pre-existing query, filter or sort, the request would be considered non-standard and, if the agency chooses to fill the request, the agency can charge a fee to recover staff time and programming costs the first time the request is made. Subsequent requests for the same data would be considered a standard request since the query, filter or sort then exists and no additional programming would be necessary to satisfy the request.

Once that new record has been created, then any subsequent request for that record becomes a standard request.

### **Requests for Entire Databases or for Portions of Databases**

Those who request an entire database or substantial portions of a database should be notified of the potential problems that may occur if the data received is simply raw data without the necessary components of the entire database. The agency should provide the data in the format in which it is maintained or any other format readily available to the agency without any additional programming. However, the agency should take reasonable measures to try to accommodate the requestor, including providing the requestor the raw data in the format desired if possible.

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<sup>4</sup> When creating databases with redacted layers, the file produced for distribution should be a combination of the original file and the redacted layer(s), so that they are one image with one layer. Once the new file is saved, it should not be possible to lift the redaction from the confidential fields.

When necessary, data should be exported in standardized computerized formats. KRS 61.874 (2) (b) states that the minimum standard format for electronic records is flat file ASCII format. However, if the agency maintains the records in a format other than ASCII and this format conforms to the requestor's requirements, the agency may use the format for standard fees. If the database has a built in export function that can easily create a new file in other database formats, or other file formats (such as Word, Excel, PDF, etc.) from an existing query or filter or sort, then the file in one of those formats may be offered to the requestor as a standard request.

In the event the records provided do not fit the description supplied by the requestor, or if it is impossible for the agency to provide the requestor the entire database, the Open Records Act requires an agency to inform the requestor of the reasons why the request cannot be fulfilled. These reasons must include any applicable statutory exemptions and may relate to legal limitations, logical database design, licensing limitations, security reasons, data links, proprietary software and hardware, or, in certain circumstances, include grounds that producing the record would place an undue burden on the agency.<sup>5</sup>

Although not required by statute, in meeting requests for a sizable portion of or an entire database, the agency may provide adequate data to assist the requestor in interpreting the data or records provided. Examples of the data you may provide includes, but is not limited to:

- The minimum software and hardware specifications the database requires
- Any unique and specialized proprietary software used in the system (in accordance with licensing agreements)
- Data dictionaries
- Field definitions
- Relationships between tables

The agency is not required to provide proprietary software or to provide software, hardware or any logical data that would compromise any system security or licensing regulations or agreements.

An agency may provide a contact person to answer the requestor's questions, in the event that the requestor has difficulty interpreting the record(s) received in response to the request.

### **Commercial Requests**

If the requested records(s) are to be used for a commercial purpose, the agency may charge the requestor a reasonable fee to recover the cost of the media, processing, and staff time required to produce the record(s). The statute also says the agency can

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<sup>5</sup> Refusal to produce records on the grounds that productions of a public record places an unreasonable burden on the agency must be sustained by clear and convincing evidence. Therefore, an agency must be prepared to articulate reasons that the request places an undue burden to invoke the limitation on access to public records. (See KRS 61.872(6)).

recover, "cost . . . of the creation, purchase, or other acquisition of the public records." The agency may require the requestor to enter into a contract with the agency that establishes the specified fee and the commercial purpose. KRS 61.870 (4) (a) defines "commercial purpose" as the direct or indirect use of any part of the record for any use by which the user expects a profit through commission, salary, or fee. Exceptions are made in KRS 61.870(4)(b) for the use of public records by print media, radio, and television news or other informational purposes, and for use in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties.

### **Online Access**

If an agency receives large numbers of requests for a particular database, then agencies are encouraged to make their databases available on the Internet for public access. Obviously this would have to involve databases that do not have restricted data in them or databases where the restricted data is securely obstructed from view. Requestors can be directed to the online database and be allowed to search the database on their own. The statute does allow for the agency to require such requestors to enter into a contract, license, or other agreement with the agency to charge fees to recover the cost of providing the records online. These fees cannot exceed the cost of physical connection to the system and the reasonable cost of computer access charges, or the records are requested for a commercial purpose, a reasonable fee based on the factors described above.

**Note:** While the agency may direct requestors to the online database, this does not relieve the burden from the agency in processing requests from parties who cannot access the online version. If the agency charges a fee for online access to otherwise free records, the agency may still be required to process an Open Records request from parties who do not wish to pay the extra fee.

### **RECOMMENDATIONS**

1. The Kentucky Open Records Law makes requests for databases a very real possibility. Keep this in mind when designing databases.
2. When possible, make databases available online and searchable by the general public.
3. When designing a database, do not link exempt records with non-exempt records, thus making it difficult to separate exempt from non-exempt when responding to an Open Records request.
4. Agencies, in order to facilitate responses to Open Records requests, should consider logical database design, statutory exemptions and confidentiality provisions, licensing limitations, security reasons, data links, proprietary software and hardware, etc. when designing databases.

5. The records custodian should have easy access to descriptive information about the agency's databases, their contents and schemas in order to respond accurately, and within the applicable statutory timeframe, to an Open Records request.

6. Agencies with little or no experience with in-house database design are advised to seek out knowledgeable assistance when designing a database. This may be essential to achieving recommendations #2 and #3.

## DEFINITIONS

**Column** – A vertical list of fields from multiple records, a list from one field.

**Database** - A database is a collection of data that is organized so that its contents can easily be accessed, managed, and updated. Databases contain aggregations of data records or files. The most prevalent type of database is the relational database, a tabular database in which data is defined so that it can be reorganized and accessed in a number of different ways. A distributed database is one that can be dispersed or replicated among different points in a network. An object-oriented programming database is one that is congruent with the data defined in object classes and subclasses.

**Data Set** – see file

**Data definitions** – Information regarding the layout, content, or use of a data field within a database. Examples of layout would include the type of file (text, excel version, HTML, ...), delimiters used (comma, tab, @, ...), field layout if fixed length (1-4 is field 1, 5-25 is field 2, ...), and other information the requestor would need to be able to load or use the data. Examples of content would include code tables when the output is not text (for field 15 1=Yes and 2=No, for field 12 1=Active, 2=Terminated, 3 =Pending, ....), a list of the field names, definitions of the contents of the fields if not readily defined by the name, etc. Examples of the use of the output might include information on how to combine information when the output is in multiple files (use field 1 from file 1 = field 1 from file 2) so that the user can create their own query.

**Field** – a defined area within a record. This definition includes a field name, a format (e.g. char, long, int.), and sometimes a length.

**File** – Two or more records of identical layout treated as a unit. The unit is larger than a record, but smaller than a data system, and is also known as a data set or file set.

**Media** – Physical storage media. A means of storing data. A piece of media allows data to be copied on to it, which can then be read back by a computer. Some types of media allow data to be recopied (destroying the original data in the process) while other types of media will only allow data to be copied to the media once. Common types of media are CD-ROM, magnetic tape, floppy disk, and paper.

**Open Record** – A public record that is subject to examination by the public according to the Open Records Law (KRS 61.870 – KRS 61.884). Public records may be open or exempt (closed). An exempt record is restricted from public access according to the exemptions listed in KRS 61.878 (1).

**Public Record (or record)** – Public records are defined by Kentucky statute KRS 61.870 (2) as "all books, papers, maps, photographs, cards, tapes, disks, diskettes, recordings and other documentary materials, regardless of physical form or

characteristics, which are prepared, owned, used, in the possession of or retained by a public agency." This statutory definition of a record has been interpreted so far by the courts to include all the data in a database based on the fact that they are located on the media described in the statute.

**Proprietary formats / software** – Privately owned and controlled. In the computer industry, proprietary is the opposite of open. A proprietary design or technique is one that is owned by a company. It also implies that the company has not divulged specifications that would allow other companies to duplicate the product.

**Query** – A question, often required to be expressed in a formal way. In computers, what a user of a search engine or database enters is sometimes called a query. A database query can either be a select query or an action query. A select query is a data retrieval query. It specifies what fields/columns the user wants to retrieve as well as defines parameters/criteria that must be met for the data to be retrieved. Parameters can include date ranges, specific entries in a field/column, specific geographical regions, etc. The type and range of parameters will depend on the fields in the underlying data. Select queries can also include calculations on the data such as sum, minimum, maximum, etc. that act upon a specified field. An action query can ask for additional operations on the data, such as insertion, updating, or deletion.

**Redact** – Edit an image or document to render confidential data unreadable.

**Relational Database** – A relational database is a collection of data items organized as a set of formally-described tables from which data can be accessed or reassembled in many different ways without having to reorganize the database tables. The standard user and application program interface to a relational database is the structured query language (SQL). SQL statements are used both for interactive queries for data from a relational database and for gathering data for reports. In addition to being relatively easy to create and access, a relational database has the important advantage of being easy to extend. After the original database creation, a new data category can be added without requiring that all existing applications be modified. A relational database is a set of tables containing data fitted into predefined categories. Each table (which is sometimes called a relation) contains one or more data categories in columns. Each row contains a unique instance of data for the categories defined by the columns. The definition of a relational database results in a table of metadata or formal descriptions of the tables, columns, domains, and constraints.

**Reports** – Formatted output that takes its data from a query that was run against a database. Reports may include summary data and special formatting for the data displayed within the report.

**Row** – In a relational database, a row consists of one set of attributes (or one tuple) corresponding to one instance of the entity that a table schema describes; a unique set of data for all the fields in a database.

**Table** – predefined format of rows and columns that define an entity.

**Tuple (database record)** – A record is a collection of data items arranged for processing by a program. Multiple records are contained in a file or data set. The organization of data in the record is usually prescribed by the programming language that defines the record's organization and/or by the application that processes it. Typically, records can be of fixed-length or be of variable length with the length information contained within the record.